



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0799]

RIN 1625-AA87

Safety and Security Zones; New York Marine Inspection and Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

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SUMMARY: The Coast Guard is requesting public comments from any and all waterway users regarding the permanent security zone that encompasses all waters within 150 yards of the bridge connecting Liberty State Park and Ellis Island. The Coast Guard is considering restoring navigational access to the waterway between Ellis Island and Liberty State Park by modifying the security zone around the Ellis Island Bridge. The purpose removal of the security zone would be to increase navigational safety in New York Harbor by allowing vessels to transit under the Ellis Island Bridge, rather than being required to transit the Anchorage Channel.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0799 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail MST1 Kristina Pundt, Waterways Management, U.S. Coast Guard; telephone (718) 354-4352, e-mail [Kristina.H.Pundt@uscg.mil](mailto:Kristina.H.Pundt@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

ANPRM	Advance notice of proposed rulemaking
NPRM	Notice of proposed rulemaking
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
MARSEC	Maritime Security
NYCWTAA	New York City Water Trail Association

#### A. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this possible rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, indicate the specific question number to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this ANPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted and if we publish rulemaking documents related to this ANPRM.

#### B. Regulatory History and Information

On November 27, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, "Safety and Security Zones; New York Marine Inspection and Captain of the Port Zone" in the Federal Register (67 FR 70892). The NPRM proposed to establish a permanent safety and security zone encompassing all waters within 150 yards of Liberty Island, Ellis Island, and the bridge between Liberty State Park and Ellis Island. We received no comments on the proposed rule. No public hearing was requested and none was held. The current 150-yard permanent security zone around the Ellis Island Bridge became effective on January 1, 2003 as enacted by a final rule entitled, "Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone" published in the Federal Register (68 FR 2886, January 22, 2003).

On May 6, 2008 the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, "Safety and Security Zones; New York Marine Inspection Zone and

Captain of the Port” in the Federal Register (73 FR 24889). The NPRM proposed to modify several aspects of the permanent safety and security zone regulations within the New York Captain of the Port Zone. We received 15 comments regarding the proposed rule. A public meeting was requested to discuss the proposed expansion of the Liberty and Ellis Island security zones to include all waters within 400 yards of these two islands instead of the existing security zone within a 150 yard radius of Liberty and Ellis Islands. Based on the comments received, the Coast Guard withdrew the proposed change to the Liberty and Ellis Island security zones and therefore a public meeting was no longer needed.

#### C. Basis and Purpose

The legal basis and authority for this ANPRM is 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; and Department of Homeland Security Delegation No. 0170.1.

On April 18, 2016, the Coast Guard received a request from the New York City Water Trail Association (NYCWTA) to consider restoring navigational access to the waterway between Ellis Island and Liberty State Park by removing the security zone around the Ellis Island Bridge. The purpose of this ANPRM is to solicit comments on potential proposed rulemakings to modify the existing security zone around the Ellis Island Bridge.

#### D. Discussion of Possible Proposed Rule

The existing security zone surrounding the Ellis Island Bridge prohibits all vessels from transiting underneath the Ellis Island Bridge and the protected waters between Ellis Island and Liberty State Park. All vessels must transit in the Anchorage Channel to the

east of Ellis Island, where larger commercial vessel traffic is prevalent. Small passenger vessels that transit to Ellis Island also use this channel. Due to congestion of the waterway as a result of this traffic, the Coast Guard is considering a modification of the existing Ellis Island Bridge security zone. Modifying or eliminating this zone would provide smaller vessels the opportunity to transit underneath the bridge instead of within the Anchorage Channel, therefore, decreasing channel congestion and increasing navigational safety in the harbor. The existing 25 yard security zone surrounding any bridge pier or abutment would still apply to this bridge as per 33 CFR 165.169(a)(5).

E. Information Requested

Public participation is requested to assist in determining the best way forward with respect to modifying the existing security zone surrounding the Ellis Island Bridge. To aid us in developing a possible proposed rule, we seek any comments, whether positive or negative, including but not limited to, the impacts that the existing security zone surrounding the Ellis Island Bridge has on navigational safety.

We are also seeking comments on the current vessel traffic and the types of vessels that transit in this area. To aid us in developing a proposed rule, we seek your responses to the following questions.

1. Should the existing security zone surrounding the bridge only be enforced between sunset and sunrise or during daylight hours as well? Why?
2. Should there be any security zone or vessel operating restrictions enforced surrounding the Ellis Island Bridge?
3. Should the Ellis Island Bridge only have a designated 25-yard security zone surrounding its piers as currently applies to all other bridges south of the Troy

- Lock on the Hudson River (33 CFR 165.169(a)(5))?
4. What types and sizes of vessels should be allowed to transit under the Ellis Island bridge?
  5. Are there tide, weather, or other variables that preclude vessels from transiting under the bridge?
  6. What are the pros of modifying the security zone?
  7. What are the cons of modifying the security zone?
  8. What are the risks to the bridge of resuming vessel traffic underneath?
  9. What are the risks to commercial and recreational vessel traffic by requiring small recreational motor, and human powered, vessels to continue transiting through the Anchorage Channel near Ellis Island?
  10. Should the U.S. Park Service screen vessels that transit underneath the bridge?
  11. Are there other bridges in the COTP Area that should not be available for recreational vessels to transit underneath?
  12. Should alternative security measures be established for access control to the Ellis Island Bridge, as per 33 CFR 105.255?
  13. Should alternative security measures be established for restricted areas, such as the Ellis Island Bridge, as per 33 CFR 105.260?
  14. Should additional security measures be established for monitoring the Ellis Island Bridge as per 33 CFR 105.275?
  15. Should there be different levels of vessel transit restrictions underneath the bridge based on the current MARSEC Level? MARSEC Level means the level set to reflect the prevailing threat environment to the marine elements of the national

transportation system, including ports, vessels, facilities, and critical assets and infrastructure located on or adjacent to waters subject to the jurisdiction of the U.S. (33 CFR 101.105 and 33 CFR 105.230).

16. What restrictions would you recommend be established for vessel transits underneath the bridge during MARSEC Level 1, 2, or 3?

Please submit comments or concerns you may have in accordance with the “Public Participation and Request for Comments” section above.

Dated: October 17, 2016.

M. H. Day,

Captain, U.S. Coast Guard,

Captain of the Port New York.

[FR Doc. 2016-26599 Filed: 11/2/2016 8:45 am; Publication Date: 11/3/2016]